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AZ CORP COMMISSION  
DOCKET CONTROL

Arizona Corporation Commission

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**BEFORE THE ARIZONA CORPORATION COMMISSION**

In the matter of:

WELDON BEALL, an unmarried man,

WELDON LLC, an Arizona limited liability  
company,

Respondents.

DOCKET No.: S-20792A-11-0114

**LEGAL MEMORANDUM RE: ARS  
§44-1844(1) EXEMPTION**

The Arizona Corporation Commission ("ACC") alleges that Respondents (Weldon Beall) and Weldon, LLC ("LLC") have violated three very distinct Arizona statutes: ARS §§44-1841, 1842 and 1991. The basis for these allegations involve the sale of securities in the form of investment contracts of the kind aptly described in the seminal cases of SEC v. W.J. Howey Co, 328 U.S.293 (1946) and Reves v. Ernst Young, 494 U.S. 56 (1990).

Quite obviously the investment contracts offered and sold by Beall to no more than 10 persons had been purchased by investors with the goal of making a profit for both parties – in this case an enormously, outlandish, unbelievable profit for the investor that only comes true in Grimms' Fairy Tales. All 10 offerees/investors comprised a very small group of relatively long time friends, business associates and a next door neighbor, none of whom were given offering memorandums, company literature, forecasts, financial statements, projections, of any other documentation other than the pages contained in Patent Number US 7,509,760 B2 issued to Weldon Beale by the USPTO on March 31, 2009.

**I. ARIZONA LAW.**

Although there is no mention of a "public offering" in either ARS§§44-1841 (unregistered sale of securities) or 1842 (sale of securities by unregistered persons), yet the law

1 is quite clear. Both statutes imply that a public offering is imposed before either of those  
2 statutes may be invoked, else what is the reason for ARS §44-1844(1) that states:

3 **“1. Transactions by an issuer not involving any public offering.”** (are exempt).

4 The clear meaning of ARS §44-1844(1) is that IF there is no “public offering,” then  
5 neither ARS§§44-1841 nor 1842 can be violated by the sale of unregistered securities through  
6 unregistered salespersons as those statutes refer only to public offerings – by implication.

7 The real question before this tribunal therefore is whether in fact there has been a public  
8 offering. No place in the Arizona Blue Sky Laws statute is the term “public offering” defined.  
9 Nor is that term defined in the Securities Act of 1933. As the term has not been legislatively  
10 defined, then we must rely upon the courts to sort out which factors may be relevant in making  
11 that determination. The following is but a partial list of factors upon which various courts have  
12 relied:

- 13 a) manner of offering;
- 14 b) number of offerees;
- 15 c) relationship of offerees -- to each other or to the issuer;
- 16 d) size of the offering;
- 17 e) protecting the offeree;
- 18 f) character of the securities offered;
- 19 g) commissions paid;
- 20 h) were commissions paid to whom;
- 21 i) purchaser’s investment intent;
- 22 j) ease of transfer; and,
- 23 k) other factors.

24 From the foregoing, it immediately becomes apparent that each case must be critically  
25 examined in the light of the particular parties involved and the particular events that occurred –  
26 rather than by references to glittering generalities. As Respondents have the burden of proving  
27 that the exemption of ARS §44-1844(1) applies, what follows is Respondents’ analysis of the  
28 relevant factors.

1 **II. MANNER OF OFFERING.**

2 In this private offering by Respondents there were no advertisements, no circulars, no  
3 prospectuses, no brochures, no letters, no solicitations, no internet invitations, no social media,  
4 no broker-dealers, no commission agents, no seminars, no luncheons, no dinners or by any other  
5 act generally comprising a public offering. In fact, Beall merely indicated to friends and a  
6 neighbor that he had an "idea" to publicly display all of a gambling casino's vaulted cash on site  
7 to gain foot traffic into the casino. His idea, as flimsy as the idea might sound at first blush,  
8 caught the imagination of friends, fellow co-workers at Courtesy Chevrolet, and a next door  
9 neighbor. Beall's idea was to publicly put on display all of a casino's multi-millions of dollars  
10 otherwise kept under lock and key in vaults maintained at each respective gambling casino.  
11 Cash is required by law and represents dollar for dollar security for all gambling chips in the  
12 hands of the public at any given time. Beall's idea is so unique that he was issued the only  
13 patent of its kind by the USPTO: US 7,509,760 B2.

14 So how did investors find Beall when he merely explained to some friends that he was  
15 applying for a patent to display casino vaulted cash in a unique way that would allow people to  
16 literally surround themselves with millions of U.S. minted currency? They invariably wanted  
17 "in" to what could be a multi-million dollar deal.

18 To succeed, he needed to raise just enough capital to get the patent issued, to sell patent  
19 rights after issuance and for living expenses for himself and his partner during the interim. All  
20 of the investors knew that Beall had no money, knew he was living with friends, and also knew  
21 that he was living in poverty. But they knew their long time friend to be an honest man from  
22 their long association. They neither asked for nor received written disclosure documents.

23 Investors also knew that they could prescribe their own particular expectations; that is,  
24 there was no predetermined return that Beall offered for dollars invested. Each separate deal  
25 with each separate investor was therefore separately negotiated. Hence, some investors  
26 negotiated better deals than others for their invested dollars. That alone set this apart as a  
27 private offering. Where have you ever seen a public offering where each investor could cut a  
28 separate deal? These circumstances mean that none of the investment contracts could be  
"integrated" with any of the other investment contracts.

1 Each of the investment contracts promised only to pay back the amount of the investment  
2 plus a significant and unique profit after sale of the patents. The amount of return varied from  
3 one investor to the next. There was NO outside due date for repayment, and repayment could  
4 only be expected from profits derived, if at all. Beall **agreed** to be the last to share in any  
5 remaining profit after all investors were first paid in full. How could such separate offerings be  
6 integrated?

7 Never has this attorney seen such "investment contracts" (in over 50 years as a securities  
8 lawyer) that offered such a stupendous return on investment as Beall's friends received in this  
9 private offering. The important consideration here is that the return on investment is beyond  
10 belief. It more likely resembles family members splitting up the family jewels than an arm's  
11 length business deal. The big question is: Would there be anything left for Beall AFTER he  
12 paid off the investors although nothing was promised until the LLC made a profitable sale of  
13 the Patent.

14 In like turn all communications to investors - irrespective of by whom initiated -- was  
15 solely by personal contact and through private negotiations. There was no intermediary, no  
16 public distribution of solicitation materials, and certainly no formal disclosure documents were  
17 disseminated for the plain enough reason: none existed.

18 In short, there is no evidence of a public offering that can be shown by the ACC. Of  
19 course, the offering itself was circumscribed by the small number of Beall's friends and co-  
20 workers, adding to its private nature offering characteristics.

### 21 **III. NUMBER OF OFFEREES.**

22 It is axiomatic that the greater number of offerees the more likely that an offering is truly  
23 public in nature, and conversely, the smaller the number, the more likely that the offering is  
24 private. (**People v. Humphreys**, 4 Cal. App.3d 693, 84 Cal. Rptr. 496 (1970). As the  
25 significant factor is the number of offerees, not the number of purchasers, it is factual that Beall  
26 offered only 10 persons with whom he was close. Had he made those 10 the incorporators  
27 pursuant to ARS §44-1844(10) – as I would have suggested – the special Arizona exemption  
28 would have made that offering exempt. That omission alone does not qualify to transmute an  
otherwise "private offering" into a public offering. The ACC labeling the LLC's offering a

1 “public offering” is a fiction, and an adverse ruling will be appealed. Beall’s offering is nothing  
2 more than sales of securities in several private transactions to a small, select, relatively  
3 insignificant number of persons...friends, co-workers and a next door neighbor. All of them  
4 knew Beall well. Beall was available to them to answer any questions they might pose. But  
5 everyone knew that Beall had nothing to sell but an “idea” to display casino cash. That he had  
6 nothing of real tangible value was certainly clear to all, even the complaining ACC witnesses.  
7 They all knew this was not an investment. This was gambling money, surely not an  
8 “investment” in the traditional sense. Like the gambling casinos that might be susceptible to  
9 Beall’s money display device, all offerees knew this was a “craps shoot” and the odds were  
10 stacked against winning. They put their money up like in a lottery, knowing they would most  
11 likely lose it all.

12 Moreover, the ten offerees did not come into the picture in a successive 12 month period.  
13 They had been garnered during an 12 month period from December, 2007 to December 2008,  
14 averaging at just under five (5) offerees per year. Accordingly, we ask this tribunal to consider  
15 whether there was a public offering during the year 2007, when 7 offerees/investors came into  
16 the picture? In 2008, with 3 additional investors did that change the picture? Do we add the  
17 years and aggregate offerees? The question is: *In which of those years – if any – did*  
18 *Respondents make a public offering of securities?*

19 If there were only 5 investors instead of 10 investors in the aggregate, would those 5  
20 investors constitute a “public offering” under the circumstances of this case? What about 1  
21 investor? It is precisely with these questions in mind why the trier of fact is required to analyze  
22 all circumstances, not just the number of offerees, to make that all important determination.  
23 What is the measurable unit of time?

24 Courts recognize that certain concepts should be taken into account, in particular that the  
25 parties had been neighbors and friends over the course of several years. Where the size of the  
26 offering was consequently small, without any advertising, Courts find these facts constitute a  
27 private rather than a public offering. (**People v. Morrow** 682 P.2d 1201 (Colo. App 1983);  
28 **People v. Michael Glenn Realty Corp**, 106 Misc 2d 46, 431 NYS 2d 285 (1980).

1 Had Beall prepared a disclosure document for potential investors he could only tell them  
2 that he had “nothing” to offer except his far fetched “idea” and nothing more. But investors  
3 knew that already. The extremely speculative nature of the “product” offered by Beall’s patent  
4 was a dead giveaway. Only the very most speculative of offerees would be attracted. Beall had  
5 no reliable projections and offered none. It was therefore each investor’s own imagination that  
6 set the parameters for return on investment.

7 **IV. NATURE OF THE OFFERING.**

8 The securities in this offering are not shares or other instruments usually created by an  
9 issuer for trading purposes, but only investment contracts containing at best an illusory promise  
10 to pay enormous returns. The investment contract truthfully stated only if the venture is  
11 successful in the sale of Beall’s patent would there be a payoff.

12 Respondents did not use commission agents to reach 10 investors, and all negotiations  
13 were face-to-face between Beall and his co-workers. It is common knowledge that without the  
14 good offices of a broker-dealer, no market trading can easily occur, if at all. That characteristic  
15 of a public offering - - a public market - - is also missing. It follows that each investor, must  
16 have had only investment purposes in mind. In fact, the investment contract clearly connotes  
17 that it cannot be assigned, sold or transferred. Nor does it contain a performance date by – a  
18 clue to its investment characteristic. Of course, although not conclusive, taking a security for  
investment only also adds to its non-public offering aspects.

19 Perhaps the most important question to be answered in defining a public offering is who  
20 are the potential investors and the corollary question: “What will investors learn from the  
21 registration statement that will help them to make an intelligent investment decision?” A  
22 prospectus could only state that Beall’s idea was generally untested, had no prototype, and that  
23 the Issuer was broke. But everyone already knew those facts. Potential investors did not  
24 therefore need the protection afforded by registration. What more did they need to know?  
25 Weldon, LLC was a one man show but Investors are always silent partners in a limited liability  
26 company. Everyone also knew that. By reason of their knowledge about the affairs of the  
27 Issuer/Respondents, investors did not require information to be found in a registration  
28 statement.

1 It is only where pertinent issuer information is withheld that a registration statement  
2 becomes an important element in the purchase of securities. Nothing about this company or its  
3 Patent had been withheld by Beall. In fact, had Beall filed a registration statement, a necessary  
4 exhibit to be filed would have been the phantom Seminole Contract - - if it actually existed - -  
5 that Mays and McCullough insist was shown to them by Beall. That no such contract exists  
6 would make it impossible to file it as an exhibit, thus shattering Mays and McCullough's  
7 positions vis-à-vis the Phantom Seminole Contract. In that respect, a registration statement  
8 would actually defeat the claims of Mays and McCullough.

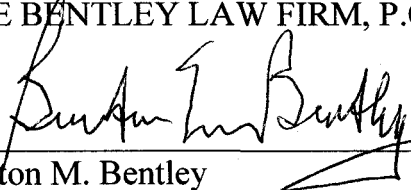
9 Of course, where the particular offering is complex and convoluted, or where an expert's  
10 opinion is required, a registration statement serves a well defined purpose in the distribution of  
11 securities. Not so here, where the issue was singular in nature, that being Beall's idea to display  
12 money for a quaint purpose. Nothing could be more simplex than Weldon's "idea." Making it  
13 work on the other hand is something that a registration statement could not augment.

14 **V. CONCLUSION.**

15 Respondents ask that a finding be made that this offering is exempt under ARS §44-  
16 1844(1) as a private offering. If this is not a public offering, then it would require a finding of  
17 "fraud" on the part of ACC (ARS §44-1991) to impart the primary jurisdictional requirement  
18 needed by the ACC to prevail under Arizona law, as fraud applies to a private offering as well.  
19 But a finding of fraud requires more than mere speculation by the ACC.

20 RESPECTFULLY SUBMITTED this 6<sup>th</sup> day of September, 2011.

21 THE BENTLEY LAW FIRM, P.C.

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23 \_\_\_\_\_  
24 Burton M. Bentley  
25 Attorney for Respondents  
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27  
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1 Original and thirteen (13) copies  
2 hand-delivered this 7<sup>th</sup> day of  
3 September, 2011, to:

4 Docket Control  
5 Arizona Corporation Commission  
6 1200 West Washington  
7 Phoenix, Arizona 85007

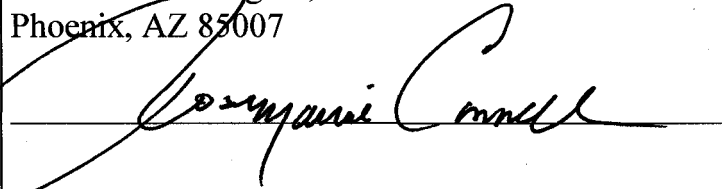
8 Courtesy Copy of the foregoing  
9 hand-delivered this 7<sup>th</sup> day of  
10 September, 2011, to:

11 Marc E. Stern  
12 Administrative Law Judge

13 Copy of the foregoing mailed  
14 this 7<sup>th</sup> day of September, 2011, to:

15 Wendy Coy  
16 Staff Attorney  
17 Arizona Corporation Commission  
18 Securities Division  
19 1300 W. Washington, 3rd Floor  
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